IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.06 OF 2004

Smt. Rozia Alex Trinedat ...Applicant

Vs.

The State of Maharashtra ...Respondent

Shri. V.B.Vagyani for the Applicant.
Shri. R.Y.Mirza A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE ON WHICH JUDGMENT IS RESERVED : JUNE 17, 2005.
DATE ON WHICH JUDGMENT IS PRONOUNCED : JULY 06 , 2005.

JUDGMENT :P.C.:

1. On 10th June, 2005 this Application was called out. Considering the fact that this Application remained pending for admission nearly for one and half years and considering the fact that copies of all relevant documents are annexed to this Revision Application, it was suggested to the Counsel appearing for the parties that the Revision Application can be decided finally. Accordingly, Counsel appearing for the parties have accepted the suggestion.

2. Rule. The learned A.P.P. waives service for the

Respondent. Taken up for hearing forthwith.

3. The Applicant is the Accused. The allegation against the Applicant is as regards the commission of offence punishable under section 66(1)(b) of the Bombay Prohibition Act, 1949 (hereinafter referred to as 'the said Act of 1949'). The case of the prosecution is that on the receipt of secret information, a shed at College Wadi, Dadar, Mumbai-28 was raided by Staff of Flying Squad of State Excise Department. At that time the Applicant was found to be in possession of bottles containing whisky. The Applicant admitted that she was not holding any licence for possessing liquor or for selling liquor. The case of the prosecution is that for Chemical Analysis two bottles of whisky having quantity of 180 ml. were sealed and taken as a specimen. Accordingly, the offence was registered alleging that the Applicant was in possession of total 320 bottles of Indian make foreign liquor exported from the other States without any valid licence, permit, pass or authorisation. It was, therefore, alleged that an Applicant has committed an offence punishable under section 66(1)(b) of the said Act of 1949.

4. The prosecution adduced the evidence by examining

three witnesses. P.W. 1 Shri B.G.Gavit is a Sub-inspector of State Excise Department. P.W.2 is one A.V.Sutrave who is a Constable attached to Flying Squad of State Excise Department and P.W.3 R.P.Valmiki who is the panch witness.

5. The learned Metropolitan Magistrate, Mumbai convicted the Applicant and directed her to undergo rigorous imprisonment for five months and fine of Rs.500/-. In an Appeal preferred by the Applicant to the Sessions Court, order of conviction was confirmed. However, order of sentence was modified and it was directed that the Applicant shall undergo rigorous imprisonment for one month and shall pay a fine of Rs.1,000/- and in default in payment of fine she will have to undergo rigorous imprisonment for further fifteen days.

6. In this Revision Application ad-interim relief was granted in favour of the Applicant on 12th January, 2004. It is stated that the Applicant was protected by an interim order even during the pendency of Appeal before the learned Sessions Judge.

7. The learned Counsel appearing for the Applicant submitted that the only allegation made against the

Applicant was regarding illegal possession of Indian make foreign liquor. He submitted that all along the case of the Applicant was that there was no seizure effected from her. He submitted that the alleged bottles of liquors which were seized were never produced before the Trial Court. He submitted that only on this ground the Applicant was entitled to acquittal.

8. The learned A.P.P. submitted that panch witness has been examined who has proved the seizure and the panchnama drawn at the time of seizure has been duly proved. He, therefore, submitted that the fact that bottles were seized was established and as no material was produced on record to show that the Applicant was in possession of permit or licence at the relevant time, order of conviction has been rightly passed by the Trial Court.

9. I have considered the rival submissions. P.W.1 Mr. B.G. Gavit has deposed that in the house of the Applicant at the time of raid the raiding party found 176 full bottles of 750 ml., quantity of Indian make foreign liquor and 144 sealed bottles of 180 ml., quantity Indian make foreign liquor of different brand. He proved the seizure panchnama. A suggestion

was given in the cross-examination to P.W.1 Mr. Gavit that no liquor was seized from the Applicant. A suggestion was given that the case made out against the Applicant was false. In the deposition of the P.W.1 Mr. Gavit there is no reference to any muddemal i.e. the seized bottles being produced before the Court. P.W.2 MR. Sutrave deposed as regards the raid and seizure of the bottles. In the cross-examination he admitted that muddemal is not brought in the Court. He denied the suggestion that no liquor was found with the Applicant. P.W.3 Mr. Valmiki who is a panch witness to the seizure narrated the prosecution story. His evidence was also challenged in the cross-examination. The learned Additional Sessions Judge in his judgment recorded that the bottles seized were not produced in the Court and even the sample bottles were not produced before the Court.

10. The only allegation against the Applicant was as regards the possession of the bottles containing Indian made foreign liquor without a valid permit. The case of the Applicant right from the beginning was of denial of being in possession of the bottles and, therefore, there was denial of seizure. Therefore, it was necessary for the prosecution to produce the bottles before the learned Magistrate. All the three

prosecution witnesses claimed to be present at the time of the seizure and as there was complete denial of the seizure by the Applicant, the production of bottles or atleast the specimens which were collected was absolutely necessary so that the witnesses could have identified the same.

11. In my view, non-production of the seized bottles by the prosecution is fatal to the case of prosecution. By no stretch of imagination it can be said that the prosecution had proved that the Applicant was in possession of bottles of liquor.

12. The learned Magistrate as well as the learned Additional Sessions Judge have completely ignored the legal effect of omission to produce the muddemal articles. Thus, there is a patent illegality committed by both the courts. The only interference which could have been drawn on the basis of the admitted position that the muddemal articles were not produced was that the allegation that the Applicant was in possession of bottles containing liquor was not substantiated.

13. In the circumstances, this Revision Application must succeed. Accordingly, impugned judgments and

orders passed by both the courts are set aside and the Applicant is acquitted of the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, 1949.

JUDGE